

These are the tentative rulings for civil law and motion matters set for Thursday, June 18, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, June 17, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0062968 Muff, John vs. Abbott, Rod

Defendant's demurrer is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The complaint, when read as a whole, alleges sufficient facts to support an unlawful detainer claim.

Defendant's answer or general denial shall be filed and served on or before June 22, 2015. (CCP§1167.3.)

2. S-CV-0032754 Balko, Kathleen, et al vs. Beazer Homes Holdings Corp.

Cross-defendants Overhead Door Company of Sacramento and H&D Electric's motion for sanctions is denied.

3. S-CV-0033614 McCluhan, Carolyn, et al vs. Gonzalez, Efrain D., M.D.

Defendants' petition to arbitrate is denied. At the original hearing set for May 21, 2015, the court continued the matter to afford defendants an opportunity to support a supplemental declaration including the omitted exhibits. Despite being afforded an opportunity to submit a supplemental declaration, defendants have failed to present the omitted exhibits. While defendants did submit an additional notice for the petition that includes a copy of a physician-patient arbitration agreement, there is no supporting

declaration to properly authenticate or lay a foundation for the document. Further, defendants' reply filed on June 12, 2015 was untimely and also failed to include the omitted exhibits. For these reasons, the petition is denied.

4. S-CV-0034296 U.S. Bank, N.A. vs. NNN Parkway Corporate Plaza, LLC

Plaintiff's motion to dissolve preliminary injunction is granted. The preliminary injunction is dissolved forthwith. The \$100,000 bond posted by defendants/cross-complainants shall be released to them forthwith.

5. S-CV-0034862 Crosby, Darwin vs. Save Mart Supermarkets, Inc.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Plaintiffs' Motion to Compel Discovery of Class Members

Ruling on Request for Judicial Notice

Plaintiffs' request for judicial notice is granted pursuant to Evidence Code section 452.

Ruling on Motion

In this motion, plaintiffs seek to compel defendant to produce the names, contact information, termination letters, and suspension letters of witnesses and putative class members subject to this litigation. While the court is inclined to grant a portion of this request, there must be protections put into place for the identities of these potential witnesses and putative class members. The current class action claim involves allegations of wrongful termination based upon physical disabilities or medical conditions. All of the information sought here was given to defendant during the scope of employment. These current and former employees deserve privacy protection. (*Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554, 561.) "[T]he information was given to [the employer] as a condition of employment. It is most probable that the employees gave their address and telephone number to their employer with the expectation that it would not be divulged externally except as required to governmental agencies (such as the Internal Revenue Service, the Social Security Administration, etc.) or to benefits providers such as insurance companies. This is a reasonable expectation in light of employers' usual confidentiality customs and practices. [Citations.]" (*Ibid.*) This, however, is weighed against the fact that employees may wish to have their information disclosed in order to participate in the current class action litigation. (*Ibid.*) To this end, the parties shall meet and confer to develop a privacy opt-out notice to be sent to the former employees that may be subject to RFPs nos. 8, 9, and 10.

The motion is continued to July 30, 2015 at 8:30 a.m. in Department 43. The parties are to file supplemental briefing on or before July 20, 2015 that must include a draft version of their joint privacy opt-out notice.

6. S-CV-0034950 Skillsky, Jeff, et al vs. Shade, David, et al

Defendant's Motion to Compel Discovery from Plaintiff Jeff Skillsky

The motion is granted. Jeff Skillsky shall provided verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and requests for production of documents, set one on or before June 26, 2015.

Defendant's Motion to Compel Discovery from Plaintiff Melissa Skillsky

The motion is granted. Melissa Skillsky shall provided verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and requests for production of documents, set one on or before June 26, 2015.

7. S-CV-0035070 Price, Ellen vs. Slade, Lora

Plaintiff's motion to set aside dismissal is granted pursuant to CCP§473(b). The dismissal entered on March 24, 2015 is set aside. The matter is set for a case management conference on August 18, 2015 at 10:00 a.m. in Department 40. The matter is to be fully at issue or sanctions will be imposed.

8. S-CV-0035262 Piatti Restaurant Company, L.P. vs. Andoria, LLC

Plaintiff's motion for entry of stipulated judgment is continued to June 25, 2015. The court is inclined to consider the substance of plaintiff's supplemental briefing despite the service deficiencies. However, defendant is afforded an opportunity to present limited additional briefing, if necessary, in light of the service deficiencies. Any further briefing from defendant shall be filed and served on or before June 22, 2015.

9. S-CV-0035282 Rassamni, A.J. vs. Herron, Jeanne, et al

The demurrer is dropped from the calendar. A notice of settlement for the case was filed on June 15, 2015.

10. S-CV-0035300 Rawles, Scott, et al vs. Simpson, Arthur Scott, et al

Plaintiffs' motion to compel discovery is granted. Defendant Arthur Scott shall provide verified responses and responsive documents, without objections, to form interrogatories and requests for production of documents on or before June 26, 2015. The matters encompassed in plaintiffs' requests for admissions are also deemed admitted.

Sanctions in the amount \$1,197.00 are imposed on defendant Arthur Scott pursuant to CCP§2033.280(c).

11. S-CV-0035356 Halicki, Halina, et al vs. Morrison Homes, Inc.

In defendant's replies to its demurrer and motion for stay, defendant states that both oppositions were untimely served. While the court is inclined to consider the oppositions, defendant should be afforded additional time to properly reply to the arguments set forth in the untimely served oppositions. The demurrer and motion for stay are continued to July 9, 2015 at 8:30 a.m. in Department 40. Defendant may file any supplemental briefing to both the demurrer and motion for stay on or before July 3, 2015.

12. S-CV-0035784 Ahronovitz, Miha vs. Bank of America, N.A., et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall heard in Department 43:

Defendants Bayview Loan Servicing, LLC and Bank of New York Mellon's Demurrer and Motion to Strike Portions of the Complaint

A short recitation of this case's procedural posture is necessary prior to discussing the substance of the moving defendants' demurrer and motion. On April 15, 2015, plaintiff filed a first amended complaint (FAC) in response to the filing of three separate demurrers by the moving defendants, defendant Bank of America, and defendant Specialized Loan Servicing, LLC (SLS). The moving defendants' demurrer and motion to strike were initially dropped from the calendar as moot in light of the FAC. The moving defendants then called the oral argument line objecting to dropping their demurrer and motion to strike in light of the answer the moving defendants filed in conjunction with their demurrer. To provide a substantive ruling on the issue, the court set aside the FAC and recalendared all three demurrers and motion to strike on the same hearing date. These demurrers and motion to strike are currently pending before the court.

Contrary to the moving defendants' assertion, the filing of an answer by one defendant does not divest a plaintiff of the right to amend the complaint as it pertains to the defendants that have yet to file an answer. (*Barton v. Khan* (2007) 157 Cal.App.4th 1216, 1220-1221.) Plaintiff was well within his right to file the FAC on April 15, 2015 in response to the demurrers brought by defendant Bank of America and defendant SLS. The question becomes whether the court should review the substance of the moving defendants' demurrer and motion to strike in light of this right. The court declines to do so. "Presumably, the purpose of the statute permitting amendments as of right before an answer is filed or a demurrer is ruled upon is to promote judicial efficiency and reduce the costs of litigation. If a defect in a pleading can be cured before the defendant has answered or the court has heard the demurrer, both judicial resources and attorney time will be saved in the process." (*Barton v. Khan* (2007) 157 Cal.App.4th 1216, 1221.) Reviewing the moving defendants' demurrer in light of the FAC filed by plaintiff, as was

his right, is the antithesis of judicial economy as the court would be reviewing a pleading that essentially is superseded. The court declines to conduct such an exercise. For these reasons, the moving defendants' demurrer and motion to strike are dropped as moot.

The set aside of plaintiff's FAC, filed on April 15, 2015, is vacated. Plaintiff's FAC is reinstated as his operative pleading.

Defendant Bank of America's Demurrer to the Complaint

In light of the court's ruling on defendants Bayview Loan Servicing, LLC and Bank of New York Mellon's demurrer and motion to strike, the moving defendant's demurrer is dropped as moot.

Defendant Specialized Loan Servicing, LLC's (SLS) Demurrer to the Complaint

In light of the court's ruling on defendants Bayview Loan Servicing, LLC and Bank of New York Mellon's demurrer and motion to strike, the moving defendant's demurrer is dropped as moot.

13. S-CV-0036240 Hill, Stephanie vs. ISR Holdings, Inc., et al

Plaintiff's application for preliminary injunction is continued to July 2, 2015 at 8:30 a.m. in Department 40 pursuant to the stipulation and order of the parties.

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